

REMARKS

As of the Advisory Action dated August 17, 2010, and subsequently filed RCE dated September 14, 2010, claims 1-6 and 8-75 were pending and under examination.

With the present supplemental amendment, claims 1 and 10 are amended. Accordingly, claims 1-6 and 8-75 are pending in the present application. No new matter is added.

Statement of the Substance of the Interview

Applicant thanks the Examiner for the courtesies extended in the interview conducted by telephone on September 7, 2010. The persons attending the interview included the Examiner, Jyoti Chawla, and representatives for the Applicant, Charles L. Gagnebin III and Brendan J. Kennedy. The discussion centered around claim 1 of the response dated July 27, 2010, the Declaration under 37 C.F.R. § 1.132 submitted with that response and the Kindie reference (U.S. Pat. Pub. No. 2003/0143309 by Kindie et al.) and the Haarasilta reference (U.S. Pat. No. 5,176,927 by Haarasilta et al.). The Examiner provided the helpful suggestion to amend the claims in relation to baked goods, in view of the evidence submitted in the Declaration and the content of the Kindie reference. The Examiner also provided several helpful suggestions for distinguishing the claimed invention over the art of record.

Claim Rejections - 35 U.S.C. § 103

Applicant has previously addressed rejections provided in the Office Action dated March 16, 2010. In addition, subsequent to the Interview conducted on September 7, 2010, and the RCE request submitted September 14, 2010, Applicant submits this Supplemental Amendment with an amendments to claims 1 and 10 to address issues raised in the Interview. In particular, the Examiner indicated in

the Interview that claims directed to a baking process could help distinguish the invention recited in claim 1 from the Kindie reference.

Claim 1 now recites:

A flour of a grain belonging to the genus Eragrostis for use in a baking process, comprising:

A falling number of the grain at a moment of grinding being at least 250; and

The grain being ground to a flour with a particle size to permit at least about 85% of the flour to pass through a sieve with a pore size of at most 150 microns.

As discussed in the Interview, the Kindie reference is directed to injera bread, which is produced in the form of a pancake like product, and not baked in the traditional sense of the term. As discussed in the declaration accompanying the response dated July 27, 2010, prior to the present invention, it was unknown to produce baked goods, or use teff flour in a baking process to produce useful baked goods.

Accordingly, Applicant submits that claim 1 is patentable over the combination of Kindie and Haarasilta as describing limitations that are not taught or suggested in either of those references.

Additional Evidence

Accompanying the present supplemental amendment is a recipe from a nationally recognized source "America's Test Kitchen" in which the chef appears to seek to reduce the gluten level of the flour used in a coating for the final cooked product. The original TV show that presented the recipe indicated that the gluten in the flour caused unpredictable results in the tempura when cooked. No amount of experimentation with the gluten resulting from adding water to conventional flour was acceptable..

Only when Vodka was used were the results acceptable. There was no thought to using a gluten free flour.

Also attached is correspondence with persons involved with "America's Test Kitchen" enquiring about the use of gluten-free flour in the recipe. The response indicates that it was not desirable to totally remove gluten from the recipe, since the results were unpromising.

This evidence suggests that teff flour is typically not recognized for use in recipes where regular flour (with gluten) is used because the texture and quality of the end result is important. In addition, the evidence indicates that persons of ordinary skill in the relevant art may seek to reduce but not eliminate a gluten content of a flour used to produce food products where texture (e.g., lightness and crispness) is an important characteristic of a desired quality end product. This evidence provides independent confirmation to that provided in the declaration of Johannes Turkensteen, which indicates that, prior to the present invention, flours that did not contain gluten would not be useful as a substitute for gluten flours to reduce gluten in producing baked goods of sufficient quality to be useful.

Claims 2-6, 8-26, 28-61 and 66-75 ultimately depend from claim 1, and should be allowable over the cited art of record for at least the same reasons that claim 1 is so allowable.

CONCLUSION

In view of the above amendments and discussion, Applicant respectfully submits that the application is now in condition for allowance, and earnestly solicits notice to that effect. The Examiner is encouraged to telephone the undersigned attorney to

Application No. 10/565,375
Filed: June 20, 2006
TC Art Unit: 1781
Confirmation No.: 2169

discuss any matter that would expedite allowance of the present application.

Respectfully submitted,
Jans Roosjen

Dated: October 28, 2010

By: /Charles L. Gagnebin iii/
Charles L. Gagnebin III
Registration No. 25,467
Attorney for Applicant(s)
bgagnebin@wsglip.com

WEINGARTEN, SCHURGIN,
GAGNEBIN & LEBOVICI LLP
Ten Post Office Square
Boston, MA 02109
Telephone: (617) 542-2290
Telecopier: (617) 451-0313

CLG/BJK/ker
397596.1